Backgrounder

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Restitution and Community Service: Alternatives to Imprisonment

Helen McKenzie
Political and Social Affairs Division

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RESTITUTION AND COMMUNITY SERVICE: ALTERNATIVES TO IMPRISONMENT

INTRODUCTION

Canada relies more heavily on imprisonment as punishment for crime than do most other western nations. Whether this heavy reliance on incarceration is justified may be questioned. The Criminal Code of Canada provides wide legislative authority for imprisonment in this country, defining maximum and sometimes minimum sentences for specific offences.

The prison sanction is defined in terms of a restriction of freedom of movement for a prescribed length of time. The concept of a prison sentence as a temporary loss of liberty has been accepted by legislators and the courts. The many punitive aspects of the prison environment have, however, tended to be ignored.

Long-term incarceration may have adverse effects on the prisoner involving, for example, family disruptions, stigmatization by society, loss of employment and the decline of job-related skills. "Removal from normal social contacts and institutions cannot help but disrupt the normal life cycle in our society. Therefore, career development, accumulation of economic benefits, establishment and maintenance of family units, and preparation for retirement will all be severely curtailed by long terms of imprisonment."(1) It is also likely to lead to the acquisition of criminal norms and culture and the enhancement of crime-related skills.(2)

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(1) Hugh J. Haley, "Does the Law Need to Know the Effects of Imprisonment?", Canadian Journal of Criminology, Vol. 26, October 1984, p. 479-491, at p. 486.

(2) Philip J. Cook, "Punishment and Crime: A Critique of Current Findings Concerning the Preventive Effects of Punishment" Law and Contemporary Problems, Winter 1977, p. 146-204, at p. 164 and p. 204.

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In spite of these harmful aspects, imprisonment is a form of punishment that traditionally in Canada has been considered by the courts and society in general as just retribution for serious crime.

A study published in 1976 by the Law Reform Commission indicated that the use of imprisonment in this country for first-time offenders seemed "quite high" -- one in five was imprisoned, although most for short terms.(1) For repeat offenders, the likelihood of serving a prison term was much greater.

The use of incarceration in this country has been criticized as excessive on numerous occasions.(2) Nevertheless, it continues to be relied upon heavily as punishment for serious crime and its scope has even been expanded in some situations in recent years.

While few might criticize the lengthy imprisonment of dangerous, violent criminals, there is a case to be made for alternative forms of sentencing for many crimes which do not involve physical harm or endanger the safety of individuals. This paper explores the need for new approaches in such cases and examines the choices of alternatives available, particularly, restitution and community service.

THE GOALS AND FAILURE OF INCARCERATION

The great reliance placed upon incarceration has not been shown to be justified in terms of the four main objectives of punishment. These are rehabilitation, protection of the public, deterrence and retribution. It is now generally recognized that imprisonment has not been effective in rehabilitating or reforming offenders, has not been shown to be a strong deterrent and has achieved only temporary public protection and

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(1) Canada, Law Reform Commission, Studies on Imprisonment, 1976, p. 18.

(2) See, for example: Canada, Solicitor General, Report of the Canadian Committee on Corrections - Toward Unity: Criminal Justice and Corrections, 1969, (the Ouimet Report); Canada, Report to Parliament by the Subcommittee on the Penal System in Canada, 1977 (the MacGuigan Report) and Ontario, Law Reform Commission, Report on Administration of Ontario Courts, 1973.

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uneven retribution, since the lengths of prison sentences handed down vary for the same type of crime.

Studies on deterrence have led to the conclusion that, generally speaking, there may be little difference in the deterrent effect of various penal measures. Some research has suggested that "longer expected sentences do not significantly deter prospective offenders from committing property crimes."(1) Another study has indicated that "custodial sentences tend to increase the likelihood of recidivism rather than reduce it."(2)

Since imprisonment offers the public protection from criminal behaviour for only a limited time, rehabilitation of the offender is of great importance. Generally, however, prisons have not been effective in reforming their inmates, as the high incidence of recidivism among prison populations shows.

Although, therefore, prisons are not really successful in achieving the objectives of punishment, they are very expensive to build and maintain in operation. The cost of building new prison space has been estimated at about $100,000 per cell and that of keeping a person in prison, at about $56 to $87 per day.(3)

PRISON AS A RESPONSE TO CRIME

It appears that a number of trends over the past several years have created a "vicious cycle" of cause and effect. The rates of various kinds of crime have increased; public demands for stronger punishment have resulted; Parliament has increased the use of imprisonment for some offences and the courts have tended perhaps to hand down more

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(1) Kenneth L. Avio and C. Scott Clark, "The supply of property offences in Ontario: evidence on the deterrent effect of punishment," Canadian Journal of Economics, February 1978, p. 1-19, at p. 14.

(2) C. Van der Werff, "Recidivism and Special Deterrence," British Journal of Criminology, Vol. 21, No. 2, April 1981, p. 136-146, at p. 146.

(3) Ruth Morris, "Prison Abolition: Lunacy or Practical Goal," Canadian Dimension, Vol. 18, No. 4, 1984, p. 5-8, at p. 6.

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and longer prison sentences. As a result, prisons have become more crowded and probably even less effective than before as instruments of rehabilitation. Time in prison now appears to increase an individual's chances of recidivism. The vicious circle is complete when an offender released from prison repeats his criminal behaviour and is sentenced again to prison.

A. Crime Rates

From 1979 to 1983, the crime rate for Criminal Code offences increased by 10.5%, for violent crime by 11.4% and for property crime by 14.4%.(1) The property crime rate was 35% higher in 1983 than in 1974.(2) Crimes involving credit card fraud increased by at least 25% per year from 1979 to 1982.(3)

The Law Reform Commission reported in 1976 that close to half the persons sentenced to penitentiaries had committed non-violent offences involving property or the public order.(4) As property crimes have been increasing since then faster than violent crime, the proportion of non-violent inmates in prison has increased. One author estimates that 80% of the adults now held in Canadian prisons do not represent any danger to society.(5) It was recently reported that more than 50% are guilty of property crimes and about 75% are serving sentences of less than five years.(6)

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(1) Statistics Canada, Canadian Crime Statistics, Catalogue 85-205, Ottawa, 1985, Table 1 (see Appendix, p. i).

(2) Ibid., p. 42.

(3) Ibid., p. 48 (see Appendix, p. ii).

(4) Law Reform Commission of Canada, Working Paper 11, Imprisonment and Release, 1976, p. 6.

(5) Paul Gaboury, "Une institution à abolir selon certains," Le Droit, Ottawa, 14 May 1985, with reference to Claire Culhane.

(6) "Non-violent prisoners often held too long, says solicitor general," the Citizen, Ottawa, 11 July 1985.

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B. Public Attitudes

The increasing incidence of crime has been accompanied by public demands for more severe penalties for offenders. For a number of years there appears to have been a hardening of public attitudes toward criminals. Gallup polls showed an increase in the percentage of people who believed the courts were too lenient toward offenders, from 58% in 1969 to 75% in 1977.(1) A poll in 1983 indicated that 85% of Canadians would like the Prime Minister to encourage the courts to be "tougher on law breakers."(2)

Lobby groups and individuals have urged stricter sentencing of, for example, drunken drivers, child abusers and wife batterers. The public response to the increased incidence of non-violent property crimes has also involved demands for more serious penalties, including more and longer prison sentences. Public opinion surveys carried out in Ontario in 1980 by a task force on vandalism indicated that many believed that more severe sentences for vandalism would help to prevent its further occurrence.(3)

The practices of parole and mandatory supervision have often been the subjects of public criticism, particularly after a criminal act by an offender released from custody. In general, many people tend to react to crime by urging imprisonment for the purpose of protecting the public. "Incapacitation is being widely touted as a solution for the problem of increasing crime .... Demands for harsher sentencing of offenders are likely to persist well into the future."(4)

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(1) Ezzat A. Fattah, "Public Opposition to Prison Alternatives and Community Corrections: A Strategy for Action," Canadian Journal of Criminology, October 1982, p. 371-385, at p. 372.

(2) The Gallup Report, "4-in-5 Would Encourage Tougher Court Penalties," The Canadian Institute of Public Opinion, 30 June 1983.

(3) D. Ellson, "Vandalism task force disagrees with polls," The Globe and Mail, Toronto, 5 January 1981, p. 4.

(4) Frank J. Porporino and Edward Zamble, "Coping with Imprisonment," Canadian Journal of Criminolgy, Vol. 26, October 1984, p. 403-421, at p. 403.

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C. Parliament

Parliament, responsive to the public concern about the growth of serious crime, has extended the use of imprisonment as punishment for some crimes. Following an extensive review of legislation, amendments were enacted to the Criminal Code of Canada in 1982 which, among other things, increased the length of prison sentences applicable in certain cases.

Changes to the provisions concerning punishment for assault may be expected to have a wide impact, including increasing use of prison sentences for convictions arising out of domestic violence. In practical terms, where previously a conviction for wife battering or child abuse might have resulted in a jail sentence of six months, under the new assault provisions the expected sentence might be a prison term of up to five years. In cases where a weapon was involved or bodily harm caused to the complainant, the prison term may now be ten years instead of five.(1)

Under the revised legislation, persons who cause harm to individuals through drunken driving also may expect harsher sentences involving imprisonment.

Aside from amendments to the Criminal Code, provincial legislation makes many offences punishable by imprisonment as, for example, in provisions dealing with child welfare.

Legislators, therefore, have placed increasing reliance on the use of incarceration as a response to social problems, although there is no assurance that it will prevent the repetition of harmful behaviour. The adoption in Canada of "extremely long minimum sentences" has been viewed as evidence of a trend toward more punitive criminal sanctions.(2)

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(1) An Act to amend the Criminal Code, S.C., 1980-81-82, c. 125, s. 245.1.

(2) Haley (1984), p. 488.

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D. The Courts

For some years there appears to have been a shift in the criminal justice system away from the goal of rehabilitation of offenders and towards that of retribution. Aware of the growing problem of crime, the courts have tended to sentence more severely, relying on punishment and banishment of the offender by imprisonment to protect society.

In fact, Canadian courts traditionally have placed heavy reliance on the prison sanction. In 1981 it was stated that "Canadian studies made during the last twenty-five years have noted the lavish overuse of imprisonment in Canada. Studies have shown that Canadian judges not only imprison too often but also for too long."(1)

The Strategic Planning Committee to the Correctional Service of Canada confirmed in 1983 that longer prison sentences were becoming the rule. It reported that the "percentage of federal inmates who had been sentenced to long-term imprisonment, 6 years to life, has increased over the last decade from 32% of the total population in 1971 to 40% in December 1982."(2) Although the mandatory "life" sentence established in 1976 for first degree murder has been a factor in the overall increase, the percentage of inmates serving periods of 6 to 10 years and 10 to 20 years had also both increased.

The director of Ontario's Crown Attorneys was reported to have suggested recently that more offenders are being sent to the federal penitentiaries because of the tougher attitude of judges towards violent crime. He stated, "The courts are dealing more seriously with more types of crime that have an element of violence and are perhaps giving heavier sentences."(3)

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(1) Stanley A. Cohen, "An Introduction to the Theory, Justifications and Modern Manifestations of Criminal Punishment," McGill Law Journal, Vol. 27, 1981, p. 73-91, at p. 84.

(2) Third Report of the Strategic Planning Committee to the Correctional Service of Canada, 1983, p. 45.

(3) Miro Cernetig, "Federal prison terms up sharply in Ontario," The Globe and Mail, 14 November 1984.

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Lengthy prison sentences, however, have not been reserved only for those found guilty of violent crime. As stated earlier, prison populations are largely composed of non-violent criminals. For example, Ontario Ministry of Corrections statistics in 1982 indicate that 37% of all admissions were for property offences, 18% for municipal violations and only 7% for offences against the person.(1) As mentioned previously, one of the most rapidly growing areas of crime is that involving fraud, usually committed by "white-collar" workers. Prison sentences of varying lengths have been handed down for this kind of crime. For example, in 1982 the following sentences were reported: 16 months to a credit manager for having transferred $8,300 of his debts to his employer; 8 and 10 years to two lawyers for defrauding clients of $1.4 million and $2.3 million, respectively; 3 years to a person found guilty of making false claims of $1.4 million to pay a mortgage.(2)

E. Prisons

As a result of these various factors, prisons in Canada have become seriously overcrowded in recent years. The number of inmates in federal penitentiaries grew by 23.4% in the four years from the beginning of 1980 to the end of 1983.(3) In some instances, as a result of the shortage of space, prisoners have been required to share cells. It is thought by many that overcrowding has contributed to the unrest and, on occasion, to the violent outbursts in prisons. Under the strain of excess population, prisons are less able to carry on the rehabilitative programs that have represented a main hope for the eventual re-adjustment of the offender to society.

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(1) Morris (1984), p. 1.

(2) Marina Strauss, "Sentencing pattern lacking for white-collar crime," The Globe and Mail, Toronto, 25 August 1982, p. 8.

(3) Porporino and Zamble (1984), p. 403, and see Appendix, p. iii, for prison population growth from 1950 to 1980.

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These related developments suggest that greater reliance on imprisonment as a response to crime is likely to increase rather than solve existing problems. New approaches appear to be necessary. Some alternatives to imprisonment have been tried.

ALTERNATIVES

Some years ago a committee of the House of Commons, after studying the penitentiary system in Canada, reported: "The criminal justice system should be carefully re-examined with a view to enlarging the alternatives to incarceration."(1)

A number of such alternatives are now in use. Some, such as parole and probation, date back to the 19th century, while others are of relatively recent origin. Alternatives being used in Canada include supervision of offenders in the community by means of probation and parole, diversion, community service work orders, fine option programs, restitution, temporary absence passes and victim-offender reconciliation programs. Community dispute mediation centres, community resource centres, halfway homes and therapeutic communities, such as facilities for alcoholics, are also in operation.

These programs, developed more extensively in some parts of the country than in others, have met with varying degrees of success. This paper describes in particular two of them: restitution and community service work orders.

The legal basis for these forms of sentence for criminal offenders is to be found in the Criminal Code of Canada. Section 663 of the Code provides that conditions may be prescribed as part of a probation order. The offender may be required "to make restitution or reparation to any person aggrieved or injured by the commission of an offence for the actual loss or damage sustained by that person as a result thereof" and "to comply with such other reasonable conditions as the court considers

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(1) Canada, House of Commons, Sub-Committee on the Penitentiary System in Canada, Report, 1976-77, Recommendation 2, p. 37.

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desirable for ensuring the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences." The use of compensatory sentences including restitution and community service orders has grown in the past few years.

A. Restitution

Restitution has been defined as an obligation imposed by the state upon the offender for the benefit of his victim. It includes compensation for injury paid by the offender to victims of crime.(1) Restitution is part of the penal sanction and is also considered to fulfil a correctional goal. As an alternative to imprisonment, it is appropriate particularly for non-violent offenders.

The Criminal Code provides for the restitution of property obtained by committing an offence if, at the time of the trial, the property is before the court or has been detained so that it can be immediately restored to the person entitled to it.(2) Such an order cannot be made in some circumstances, for example, where the property has passed to an innocent purchaser for value or where there is a dispute about ownership by claimants other than the accused.

Restitution may also be prescribed by the court as a form of redress included as a condition of a probation order. A court may order the accused person to make restitution or reparation to the aggrieved or injured person for the loss or damage sustained by that person as a result of the offence committed.(3) In such a case, restitution is part of sentencing and is often, in fact, an alternative to imprisonment.

As a sanction, restitution may involve the payment of money or any other action by the offender to make good the damage to the victim.

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(1) Cohen (1981), p. 90.

(2) Criminal Code, R.S.C. 1970, Chap. C-34, as amended, Sec. 655 (1).

(3) Ibid., Sec. 663(2)(e).

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"Since the purpose is to restore, as far as possible, the financial, physical or psychological loss, restitution could take many forms including an apology, monetary payment, or a work order."(1)

Restitution is based on the ancient and common sense approach that an offender should be made to restore stolen property to its owner or to pay for damage done. In ancient times, it was accepted as a natural way of settling disputes and in some countries it has remained an important concept in the judicial process.

The modern criminal law in Canada, however, until recently has not paid a great deal of attention to restitution in sentencing practices. The usual criminal sanctions of imprisonment or fine address the interests of society rather than those of the victim. Thus, a fine is payable to the Crown and an offender is imprisoned by the state.

The concept of restitution, on the other hand, is a recognition that justice demands that redress should be made to the victim of a crime for injuries to the person or property. In this respect, restitution is a rational and natural sanction. It means that the victim personally will be recompensed for what has been lost, not only materially but also symbolically and in terms of suffering experienced because of the crime.

"Many legal processes remove the victim from the action, leave him entangled in legalities with no compensation, little help or interpretation .... Restitution turns attention back to the victim, restores to him some compensation, usually monetary, for loss."(2)

Another important aspect of restitution is its correctional potential for the person who commits a crime. In many cases it improves his self-esteem and behaviour. It "gives the offender a chance to earn and repay honestly what he stole or destroyed, and a sense of proportion related to his action. The lack of a connection between a small theft

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(1) Law Reform Commission of Canada, Working Paper 5, Restitution and Compensation, October 1974, p. 8.

(2) Ruth Morris, "Creative Alternatives to Prisons," paper presented to Conference on Prison Overcrowding, Toronto, 1985, p. 6.

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and months in prison deprives most offenders of an understanding of justice and leaves them feeling a sense of having been wronged. Restitution relates what they did to what they must do."(1)

The Law Reform Commission in 1974 suggested that the criminal law was in a "fragmented state" with respect to restitution and urged that it be made central to sentencing theory and practice.(2)

In recent years the courts have tended to turn increasingly to this sanction for less serious crimes. It may be that public advocacy on behalf of crime victims has increased awareness of their situation in relation to the workings of the criminal justice system.

Innovative developments in the correctional system have included voluntary restitution programs. For example, at Stanford House in Toronto, this kind of program was developed to effect reconciliation between victims and offenders in cases of theft. An example of its application described in 1980, involved a young man serving a nine-month sentence at Mimico Correctional Centre in Toronto who was transferred to Stanford House Community Resource Centre to participate in a program of voluntary restitution. He agreed to pay the victim $83.33, which represented his share of the amount taken in a robbery. The restitution program was reported to have allowed him a chance to redeem himself with society and his victim and to gain a sense of self-respect and responsibility.(3)

At a 1980 workshop studying The Law Relating to Probation and Sentencing Alternatives, the then Federal Justice Minister advocated the use of restitution in sentencing in appropriate cases. He stated that by emphasizing restitution, the offender is encouraged to develop positively his own personality and capacity and to engage in constructive social activity. "In other words, he is treated as a human being.

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(1) Ibid.

(2) Ibid., p. 10.

(3) David Hatt, "Reconciliation - Stanford House, Toronto," The Community in Corrections, No. 24, Summer 1980, p. 4.

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Such a sentence invites him to reconciliation with the community instead of isolating him from social and economic intercourse."(1)

B. Community Service

1. Description

The sentence of community service was introduced in England in 1974 following the enactment of new criminal justice legislation in 1972. It came to be commonly used there during the 1970s and was adopted in Canada as well. It has been regarded as an appropriate disposition for offenders convicted of a wide range of less serious offences.

As an alternative to jail terms, sentences involving community service have often been ordered in this country in recent years, as a condition of probation orders. Instead of being incarcerated, offenders are required to perform without pay prescribed work in the community for specific periods of time. They may be required, for example, to help the underprivileged, to shovel snow, clean parks, work in children's centres or deliver meals on wheels for the elderly. The essential characteristic of the work required is that it be of benefit to the community. (In British Columbia, an effort was made to expand this form of sentence to provide direct service to the victim. Investigation revealed, however, that the large majority of citizens did not want victim assistance through direct service by offenders.(2))

A community service order is required to be reasonable and designed to secure the good conduct of the accused person and to prevent a repetition by him of the same offence or the commission of other offences.

There are many advantages for the offender in the community service program. They include the possibilities for new relationships, new

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(1) "Flynn recommends use of alternative sentencing," The National, Canadian Bar Association, Toronto, January 1980.

(2) Darryl Plecas and John Winterdyk, "Community Service: Some Questions and Answers," Provincial Judges Journal, March 1982, p. 11-12 and 19, at p. 12.

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learning and job training and the chance to develop good work habits and to make a constructive use of time.

There is also an important economic advantage for the taxpayer. It has been calculated that, whereas imprisonment would cost at least $50 per day per person, the administration of a community service order costs only about $3 a day.(1)

2. Experience

From the beginning, this sentence has enjoyed a wide measure of support both from the public and people involved in the criminal justice system. As a penal measure, it has been "almost uniquely free of controversy."(2) It was reported in 1982 that community service programs appeared to be reasonably successful wherever they were carried on. Experience in British Columbia and in Ontario appears to bear this out.

Provincial court judges in British Columbia "routinely sentence people convicted of offences such as impaired driving to community service in addition to a fine."(3) Research in that province in 1981 indicated that the large majority of offenders sentenced to community service felt that they were getting something out of the program, that their work was appreciated, "that CS will help them stay out of trouble, and that they are paying back the community for having committed an offence."(4) It was found that the attitudes of offenders were changed through participation in community service and that, regardless of type, the offenders with the most positive attitudes were those who had completed the greatest number of hours of service.

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(1) Morris (1985), p. 5.

(2) S.A. Thorvaldson, "Justifying Community Service, Provincial Judges Journal, March 1982, p. 7-14, at p. 7.

(3) "B.C. to review payments in lieu of community service," The Globe and Mail, Toronto, 27 April 1981.

(4) Plecas and Winterdyk (1982), p. 11.

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This non-custodial form of sentence has been found to be particularly appropriate and effective in the rehabilitation of the wealthy offender, to whom the payment of a fine causes little concern.

The beneficial impact of community service orders on the individual offender as well as on the community has been evident also from experience in Ontario. In that province, increasing use has been made in recent years of community service orders for people convicted of a wide range of offences. In the period from 1978 to 1984 such offenders had served a total of more than one million hours of work.(1) The Correctional Services Minister of Ontario stated in November 1984 that 20% of offenders sentenced to do community work actually had done more than ordered, staying on either to finish a job or becoming personally involved in volunteer efforts.(2) In addition, it has been found that this work experience has led to subsequent job opportunities for some individuals.

The Ontario Court of Appeal has decided that, "where appropriate, community service orders should be used and the practice should be extended. The use of the condition must, of necessity, be based on practical consideration relative to the ability of the offender to perform the work and the community to provide the avenues of enterprise."(3)

A further practical consideration involves the length of the sentence. In Canada, as in Britain, a limit has been placed on its term of duration. Most of the American states which have adopted this form of sanction do not specify such a limit. It has been argued that the latter arrangement is preferable, allowing more flexibility to relate the severity of the order to the seriousness or extent of harmfulness of the offence to the community.(4)

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(1) April Lindgren, "Community work helps turn young offender's life around," The Citizen, Ottawa, 20 November 1984, p. A5.

(2) Ibid.

(3) Judge John B. Varcoe, "The Misuse of Community Service Orders," Provincial Judges Journal, March 1982, p. 13-14, at p. 14.

(4) Thorvaldson (1982), p. 10.

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3. Goals

Community service has been considered in terms of the goals of sentencing. In the view of one authority on the subject, it seems "not merely to satisfy various points of view but to reconcile two aims which have defined the central controversy in sentencing, two aims which are logically and implacably opposed -- retributive 'justice' and humanitarian or scientific 'treatment'."(1)

Community service does not incapacitate the offender to any serious degree. Although it is to an extent punitive, it is not designed as a form of retribution or intended to cause suffering. In fact, program planners usually attempt to find work that is suitable to the offender's skills and interests. Rehabilitation of the person sentenced is only part of the intent of this program. The offender is required to be responsible not merely for himself but also for the effect of his behaviour on others. This form of sentence therefore represents not only a change in method of punishment but also a change of goals.

The object is to foster "an awareness of the needs of others, an awareness 'that the members of society are interdependent' ... in short, ... to change the offender's basic moral attitudes toward his society."(2) This goal represents a desire not merely to repair damage done but to express the principle of justice in social relations.

"Judges have felt the need for a non-custodial penalty that would be a satisfactory alternative to jail and the fine, and that would not only impose punishment and act as a deterrence, but also emphasize the offender's responsibility to the community. The Community Service Order is a means of providing restitution to society for the harm caused by the offender. ....

"This form of penalty, a very useful alternative to the traditional methods of sentencing, emphasizes the offender's responsibility to society in a direct way."(3)

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(1) Thorvaldson (1982), p. 7.

(2) Ibid., p. 9.

(3) Varcoe (1982), p. 13.

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Having distinguished its aims from those of other penalties, community service advocates have suggested that provision be made for community service orders in distinct legislation, instead of merely as a condition of a probation order.(1)

Basing his reservation on experience in the United States, one analyst has suggested that in the existing practice, some administrative inconsistencies about eligibility and duration and type of service have created a potential threat to the equality of justice. In this respect also, the argument has been made for definitive legislation providing for community service as a prescribed sentence in its own right rather than as a condition of a probation order.(2)

CONCLUSION

The use of imprisonment as a main response to a wide variety of offences against the law is not a tenable approach in practical terms. A very large proportion of offenders are not violent or dangerous. Their behaviour is not likely to be improved by the prison experience. In addition, their growing numbers in jails and penitentiaries entail serious problems of expense and administration and possibly increased future risks to society. Alternatives to imprisonment, therefore, are increasingly viewed as a necessary development. Experience has been gained in a variety of such alternatives.

In recent years, the use of restitution and community service orders for non-violent offenders has met with considerable approval. These forms of sentencing appear to offer more hope than imprisonment of achieving the eventual rehabilitation of the offender. In addition, they recognize the involvement and grievance of the victim and provide some measure of redress, at the very least in a symbolic way.

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(1) Thorvaldson (1982), p. 10.

(2) Ibid., p. 7.

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An argument has been made for new legislation to provide specifically for community service orders in prescribed circumstances and for extending the use of this and other alternative forms of sentencing. It is hoped that the Canadian Sentencing Commission will address these concerns in its development of model sentencing guidelines.

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APPENDIX

TABLE 1. Crime Rates Based on 100,000 Population, Canada, 1979-1983 and Percentage Change in Rate from 1979-1983

TABLEAU 1. Taux d'infractions pour 100,000 habitants, Canada, 1979-1983 et variation en pourcentage des taux entre 1979-1983

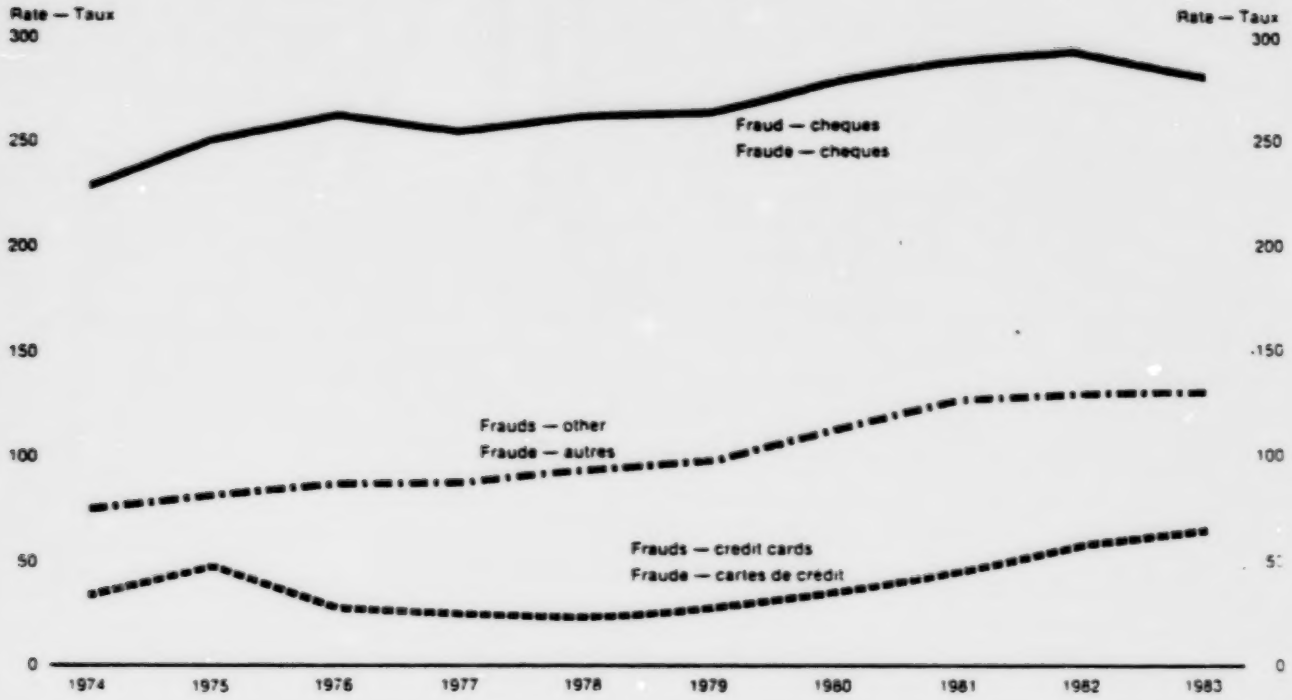
Offence / Infraction	1979. Number / Nombre	1979. Rate[1] / Taux[1]	1980 Number / Nombre	1980 Rate[1] / Taux[1]	1981 Number / Nombre	1981 Rate[1] / Taux[1]	1982 Number / Nombre	1982 Rate[1] / Taux[1]	1983 Number / Nombre	1983 Rate(1) / Taux(1)	Percentage change in rate 1979-1983 / Variation en pourcentage des taux entre 1979 et 1983
Murder - Meurtre	587	3	493	2	599	3	624	3	625	3	-
Attempted murder - Tentative de meurtre	754	3	792	3	900	4	943	4	880	4	+33.3
Manslaughter - Homicide involontaire coupable	39	--	97	--	66	--	62	--	51	--	--
Rape - Viol	2,291	10	2,315	10	2,559	11	2,528	10	(2)	(2)	(2)
Other sexual offences - Autres infractions d'ordre sexuel	10,062	42	10,472	44	10,754	44	11,336	46	(2)	(2)	(2)
Wounding - Blessures	2,295	10	2,407	10	2,701	11	2,572	10	(2)	(2)	(2)
Assaults (not indecent) - Voies de fait (sauf attentat à la pudeur)	110,616	466	114,704	477	118,375	486	123,340	501	(2)	(2)	(2)
Robbery - Vol qualifié	20,899	88	24,581	102	26,292	108	27,257	111	24,274	98	+11.4
Crimes of violence(3) - Crimes de violence(3)	147,528	621	155,864	648	162,228	667	168,646	685	172,315	692	+11.4
Breaking and entering - Introduction par effraction	296,437	1,248	349,694	1,454	367,250	1,509	369,882	1,502	362,376	1,456	+16.7
Theft, motor vehicle - Vol-véhicules à moteur	91,445	385	93,928	391	96,229	395	86,997	353	75,988	305	-20.8
Theft over $200 - Vol de plus de $200	169,950	716	224,595	934	266,286	1,094	295,261	1,199	292,973	1,177	+64.4
Theft $200 and under - Vol de $200 ou moins	516,184	2,174	539,490	2,244	561,827	2,308	570,556	2,316	548,229	2,203	+1.3
Have stolen goods - Avoir en sa possession	20,997	88	24,657	103	25,599	105	25,830	105	24,767	100	+13.6
Fraud - Fraudes	91,684	386	102,255	425	112,327	461	118,397	481	118,370	476	+23.3
Property crimes - Crimes contre la propriété	1,186,697	4,997	1,334,619	5,551	1,429,520	5,873	1,466,923	5,955	1,422,703	5,716	+14.4
Prostitution	1,283	5	1,504	6	1,551	6	700	3	935	4	-20.0
Gaming and betting -Jeux et paris	3,059	13	2,695	11	2,527	10	2,420	10	2,232	9	-30.8
Offensive weapons - Armes offensives	15,299	64	15,938	66	17,706	73	17,660	72	16,417	66	+3.1
Other Criminal Code - Autres infractions au Code criminel	501,406	2,111	534,779	2,224	554,669	2,279	547,319	2,222	534,031	2,146	+1.7
CRIMINAL CODE - TOTAL - CODE CRIMINEL	1,855,271	7,813	2,045,399	8,507	2,165,201	8,907	2,203,668	8,946	2,148,633	8,633	+10.5
Federal statutes (non-drugs) - Lois fédérales (non-drogues)	57,634	243	45,589	190	45,320	186	48,229	196	45,764	184	-24.3
Cannabis (Marihuana)	56,834	239	64,866	270	65,763	270	53,658	218	43,799	176	-26.4
Other Narcotic Control Act Drugs(4) - Autres drogues visées par la Loi sur les stupéfiants(4)	3,781	16	4,548	19	5,158	21	6,826	28	6,980	28	+75.0
Controlled drugs - Drogues d'usage contrôlé	1,034	4	990	4	947	4	1,061	4	884	4	-
Restricted drugs - Drogues d'usage restreint	3,254	14	3,772	16	3,234	13	3,091	13	3,184	13	-7.1
Provincial statutes - Lois provinciales	438,204	1,845	452,812	1,883	481,232	1,977	434,351	1,763	408,939	1,643	-10.9
Municipal By-laws - Règlements municipaux	69,598	293	74,163	309	80,202	329	87,956	357	90,395	363	+23.9
All offences - Total - Toutes les infractions	2,485,630	10,467	2,692,159	11,198	2,850,099	11,709	2,838,848	11,525	2,748,578	11,043	+5.5

(1) Because of rounding procedures, the rates may vary slightly from those shown in other tables.
(1) À cause de méthodes d'arrondissement, les taux peuvent varier légèrement de ceux des autres tableaux.
(2) Breakdown for these offences is not available due to the proclamation of Bill C-127 in 1983. However, this data has been included in the total crimes of violence category.
(2) La répartition de ces infractions n'est pas disponible à cause de la proclamation de la Loi C-127 en 1983. Toutefois, ces données sont incluses dans le total de la catégorie de crimes de violence.
(3) Infanticides are included in Total Crimes of Violence.
(3) Les infanticides sont inclus dans le total des crimes de violence.
(4) Formerly entitled addicting opiate-like drugs and includes heroin, cocaine and other Narcotic Control Act Drugs.
(4) Designé auparavant sous le titre de dérivés de l'opium entraînant la narcomanie et comprend l'héroïne, la cocaïne et d'autres drogues visées par la Loi sur les stupéfiants.

Figure 24

Rates per 100,000 Population for Selected Fraud Offences, 1974-1983, Canada

Taux de certaines fraudes pour 100,000 habitants, 1974-1983, Canada



Fraud offences accounted for 8.3% of property crimes and 5.5% of total Criminal Code offences reported by police to the Centre in Canada during 1983. Cheque frauds, the largest component of total fraud offences, has historically comprised approximately 60.0% of this offence category.

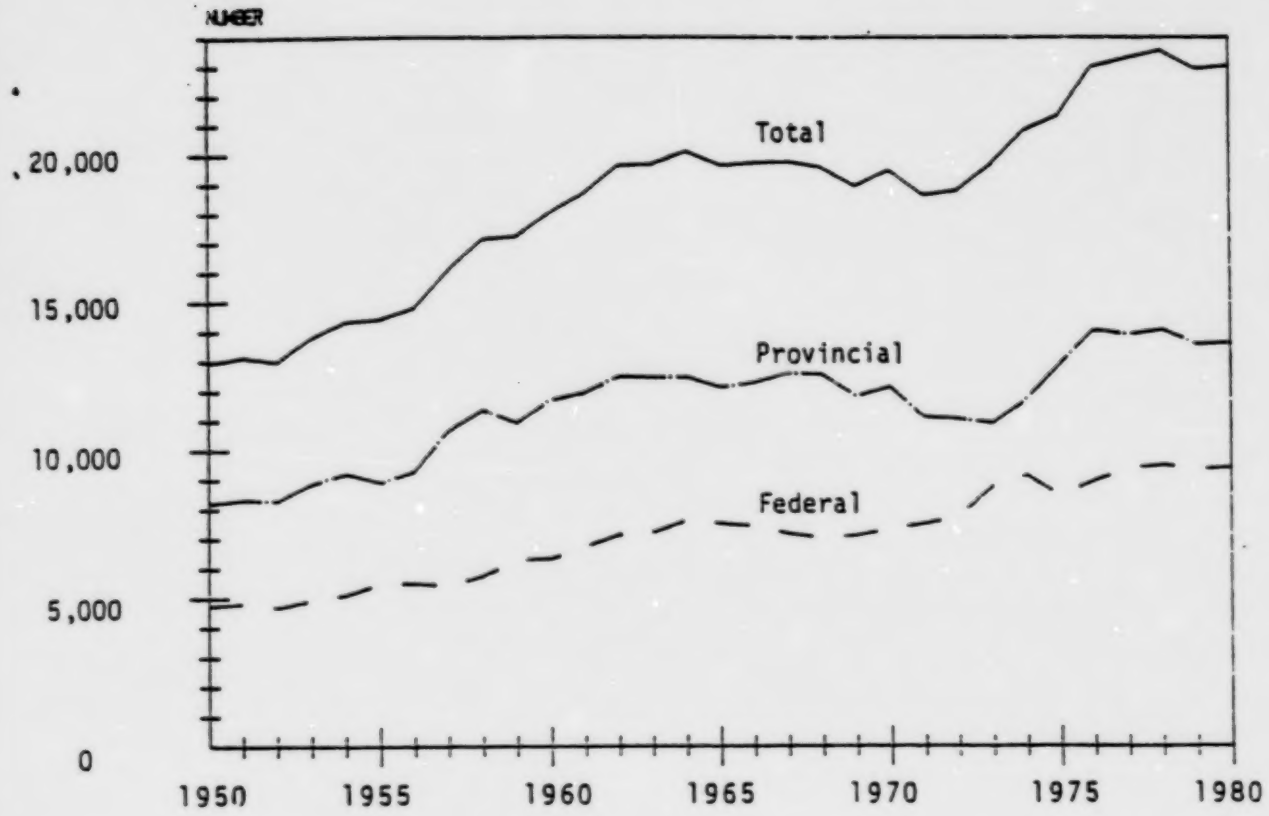
The 10-year trend lines for the rates for the three fraud offences are examined in Figure 24. The rates for all of the fraud offences begin a period of increase in 1978 or 1979. The rate for credit card fraud increased at least 25.0% per year from 1979 with the single exception of 1983 when the percentage increased dropped to 10.2%. The rates for cheques and other frauds have shown a tendency toward stabilization over the last three years.

En 1983, les fraudes représentaient 8.3% des crimes contre la propriété et 5.5% du nombre total d'infractions au Code criminel signalées au Centre par la police dans l'ensemble du Canada. Les fraudes en matière de chèques ont de tous temps représenté la plus grande partie des fraudes commises au Canada, soit environ 60%.

La figure 24 étudie les tendances des taux des trois catégories de fraudes au cours des 10 années sur lesquelles porte l'étude. On peut observer un mouvement ascendant des taux de toutes les catégories de fraudes à partir de 1978 ou 1979. Ainsi, le taux de fraudes en matière de carte de crédit a augmenté d'au moins 25% par année à partir de 1979, sauf en 1983, où l'augmentation n'a été que de 10.2%. Les taux des fraudes en matière de chèques et des autres fraudes ont eu, par contre, tendance à se stabiliser au cours des trois dernières années.

Statistics Canada, Canadian Crime Statistics, 1985, p. 48.

PERSONS INCARCERATED IN ADULT CORRECTIONAL INSTITUTIONS, CANADA, 1950-80



N.B. These figures illustrated above were derived from populations on register at fiscal or calendar year-end, and average daily counts.

- While incarcerated populations have risen over the 30 year period, there have been extreme fluctuations in the rate of increase.
- With the possible exception of the period around 1973, changes in the provincial incarcerated population do not appear to be related to reciprocal changes in the federal incarcerated population.

Source: Ministry of the Solicitor General, "Incarceration in Canada", (unpublished), Statistics Division.

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